

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security

Citizenship and Immigration Services

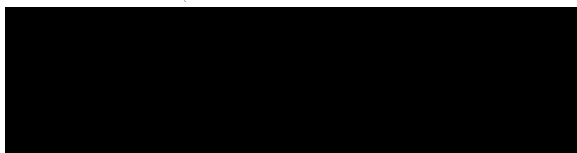
ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 I Street, N.W.

Washington, D.C. 20536

[Handwritten signature]



JAN 05 2004

FILE:



Office: Texas Service Center

Date:

IN RE: Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act,
8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director noted that the applicant, in response to her request for additional evidence, furnished proof of his residence in the United States; however, the documents did not contain all of the requested information. She determined that the applicant failed to submit evidence, as had been requested, to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On appeal, the applicant states that he entered the United States without inspection during the year 1998 (the TPS application shows that the applicant claimed to have entered the United States during June 1996). The applicant asserts that he applied for TPS the first time, and that he resided continuously in Miami, Florida, since his arrival. He claims that the office where he applied disappeared and they failed to respond to his telephone calls.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;

- (d) Is admissible as an immigrant except as provided under § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f)(2) of this section.

The term *continuously resided* as used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in

the regulations and since December 30, 1998. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present* as used in 8 C.F.R. § 244.1 means actual physical presence in the United States for the entire period specified in the regulations and since January 5, 1999. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The record reflects that the applicant filed his TPS application on July 1, 2002. In a notice of intent to deny dated November 26, 2002, the applicant was requested to submit evidence to establish that: (1) he has continuously resided in the United States since December 30, 1998; (2) he has been continuously physically present from January 5, 1999 to the date the application was filed; and (3) he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director noted that although the applicant, in response, furnished additional documentation to establish his residence in the United States, not all of the requested information was submitted.

The applicant, on appeal, submits evidence that his mother was eligible for TPS. Spouses and children (of aliens who applied for TPS under the initial designation) who did not initially apply for TPS although they are independently eligible for TPS, qualify for late registration if they are physically present in the United States and have resided in the United States prior to December 30, 1998. Furthermore, the applicant must provide evidence that, at the time of the initial registration period of January 5, 1999 through August 20, 1999, he or she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

The applicant, in this case, was born on May 17, 1979, and is over the age of 21 years; therefore, he does not meet the definition of "child" as defined in section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). Nor did the applicant apply for TPS within 60 days of his 21st birthday as provided in 8 C.F.R. § 244.2(g).

While the applicant, on appeal, furnished additional evidence of his residence in the United States, no evidence was furnished to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

The applicant claims that he had previously applied for TPS. No evidence, however, was furnished to corroborate his claim that the application, with fee, was in fact received by the Service. The applicant, therefore, has failed to establish that he met the qualification for late initial registration, and to overcome the findings of the director pursuant to 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that he meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden. The appeal will be dismissed.

ORDER: The appeal is dismissed.